IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.3214 of 2007 (O&M)

Date of Decision: 29.10.2007

R.L.Sodhi ...Petitioner

Vs.

M/s H.M.T.Limited & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Ashok Aggarwal, Senior Advocate,
with Mr.Sanjeev Sharma, Advocate,
for the petitioner.

Mr.R.K.Chhibbar, Senior Advocate with
Mr.Lalit Thakur, Advocate,
for the respondents.

Vinod K.Sharma, J.

This revision petition under Article 227 of the Constitution of India has been filed against the order dated 14.6.2007 vide which while adjourning the case for filing of written statement and reply, an order was passed restraining the dispossession of the plaintiff-petitioner from House No.AD-119, HMT Colony, Pinjore except by following provisions of the Public Premises Act. The order passed reads as under:

"W.S. & Reply to be filed on 20.08.2007

Till then, the Plaintiff be not dispossessed from house No.AD 119 (suit property) except by following provisions of Public Premises Act."

The petitioner-plaintiff has filed a suit for injunction restraining the defendant-respondents from continuing proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short the Act) on the plea that there exists a relationship of landlord and tenant between the parties.

It was claimed in the suit that Ministry of Urban Development and Poverty Alleviation, Director of Estate had passed a resolution dated 30.5.2002 which stands published in the Gazette of India dated 8.6.2002 wherein it has been provided that possession from the tenant cannot be taken except under the Rent Act as applicable. It was in the suit that an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure (for short the Code) was moved on which the order referred to above has been passed.

The contention of Mr.Ashok Aggarwal, learned senior counsel appearing for the petitioner was that by way of impugned order by permitting the respondents to proceed under the Act the very object of the suit stands defeated that too without giving an opportunity to the petitioner to put up his case.

On notice respondents have put in appearance through their counsel.

Mr. R.K.Chhibbar, learned senior counsel appearing on

behalf of the respondents placed reliance on the Gazette of India dated 13.1.1973 to contend that in exercise of powers conferred by Section 3 of the Act the Central Government has appointed Superintendent Plant/Estate Officer, Hindustan Machine Tools Limited, III Machine Tools Factory Estate, Pinjore District Ambala (Haryana) as Estate Officer for the purposes of the said Act who have been vested with the powers conferred, and perform the duties imposed, on Estate Officers, by or under, the said Act, within the limits of their respective jurisdiction. He further submits that in the said notification the public premises owned or acquired or hired by the Hindustan Machine Tools Limited which are under the control of Superintendent Plaint/Estate Officer are covered. The contention, therefore, was that the proceedings against the petitioner have rightly been instituted under the Act in pursuance to the authority given by way of notification published in the Central Gazette referred to above.

Learned senior counsel for the respondents further placed reliance on the judgment of this Court in CWP No.9278 of 2006 filed by the petitioner wherein the following order was passed:

> "At the outset learned counsel appearing for the respondents states that the petitioner has already filed a detailed objection petition/representation before the Estate Officer, which is under consideration of the Estate Officer.
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> Sh.Takkar also states that if the petitioner so chooses, he may further file a supplementary representation, which

shall also be taken into consideration by the Estate Officer. Sh.Takkar has also stated that the petitioner may continue in possession of the premises in question till the matter is finally decided by the Estate Officer, and for a further period of three months even thereafter. The aforesaid fair offer made by Sh.Takkar has been accepted by the learned counsel for the petitioner.

In view of the aforesaid stand taken by the parties,we dispose of the present petition as having been rendered infructuous.

Copy of the order be given dasti on payment of the usual charges."

The contention of the learned senior counsel for the respondents, therefore, was that the petitioner is now estopped from challenging the jurisdiction of the Estate Officer under the Act and therefore, the suit as filed was not competent.

Learned senior counsel for the respondents also referred to Section 15 of the Act to contend that the suit filed by the petitioner is not maintainable as Section 15 of the Act specifically bars the jurisdiction of the civil court to entertain the disputes covered under the Act. The final argument of the learned counsel for the respondents was that the petitioner in the suit had relied upon certain instructions which being contrary to the Act cannot be relied upon.

However, I feel, at present there is no necessity for this

Court to go into the contentions raised by the learned counsel for the parties as at present the matter is yet to be decided by the learned trial court and decision on an application moved under Order 39 Rules 1 and 2 of the Code is yet to be decided. The learned trial court has to take a decision on an application moved under Order 39 Rules 1 and 2 of the Code on the settled principles of law i.e. prima facie case, balance of convenience and irreparable loss and injury to the parties concerned.

The impugned order passed by the leaned trial court dated 14.6.2007 cannot be sustained as the Court could not have permitted the respondents to continue with the proceedings under the Act while giving time to the respondents to file written statement and reply to the suit and the application. The impugned order is, therefore, set aside. The learned trial court is directed to dispose of the application moved under Order 39 Rules 1 and 2 of the Code by passing a speaking order after hearing the learned counsel for the parties and taking into consideration documents and pleadings of the respective parties.

The contentions of the learned counsel noted above have been noticed as these have been raised which should not be treated to be expression of opinion of this court on any of the contentions raised. Learned trial court should decide the matter independently, on settled principles of law applicable for deciding application under Order 39 Rules 1 & 2 C.P.C.

(Vinod K.Sharma)
October 29,2007 Judge
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